UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MIGUEL GADDA,

Plaintiff,

v.

THE STATE BAR OF CALIFORNIA, TRACEY McCORMICK (State Bar Counsel), BETTY YOUNG (Client Security Fund, State Bar), THE SUPREME COURT OF CALIFORNIA, real party in interest, BOARD OF IMMIGRATION APPEALS and DEPARTMENT OF HOMELAND SECURITY, JENNIFER BARNES (EOIR Counsel), MIRIAM HAYWARD (Immigration Judge), ALBERTO GONZALEZ (Immigration Judge), MIMI S. YAM (Immigration Judge),

Defendants.

No. C 05-03112 MHP

MEMORANDUM & ORDER
Re: Motion for Judgment on the Pleadings, Motion to Dismiss, Motion for Partial Summary Judgment

Plaintiff Miguel Gadda brought this action against the State Bar of California, Tracey McCormick, Betty Young, and the Supreme Court of California (the "state defendants"), alleging violations of various federal statutes and constitutional provisions in their attempts to collect monies owed by plaintiff to the state bar. Plaintiff further alleges that defendants Board of Immigration Appeals, Department of Homeland Security, Jennifer Barnes, Miriam Hayward, Alberto Gonzalez, and Mimi S. Yam (the "federal defendants") have violated plaintiff's civil rights by causing plaintiff

public humiliation during immigration court proceedings and by engaging in harassing and unlawful correspondence with plaintiff. Now before the court are each of the parties' motions, variously styled as motions to dismiss, for judgment on the pleadings, and for partial summary judgment. Having considered the parties' arguments and submissions, and for the reasons set forth below, the court rules as follows.

BACKGROUND[1]

Plaintiff is a disbarred lawyer who formerly practiced immigration law before federal immigration judges, including those named as parties to this lawsuit, and the Board of Immigration Appeals. As a result of repeated instances of incompetence and misconduct, plaintiff was disbarred by each of the bodies before which he was licensed to practice: the California state courts, the federal immigration courts, the Northern District of California, and the Court of Appeals for the Ninth Circuit. In a lawsuit commencing in 2001, plaintiff challenged his disbarment on various grounds, including a claim that the state bar exceeded its authority as a state institution in disbarring plaintiff, who practiced law exclusively in federal court. This court denied plaintiff's request for a preliminary injunction. See Gadda v. Ashcroft, No. C-01-3885 PJH, 2001 WL 1602693 (N.D. Cal. Dec. 7, 2001) (Hamilton, J.), aff'd, 377 F.3d 934 (9th Cir.), cert. denied, --- U.S. ---, 125 S. Ct. 275 (2004). Two other lawsuits relating to plaintiff's disbarment are currently on appeal. Gadda v. Ashcroft, No. C-03-4779 PJH; In re Miguel Gadda, No. C-02-0017 MHP.

On November 15, 2002, upon the conclusion of plaintiff's state disbarment proceedings, the State Bar filed a certificate of costs in the amount of $21,845.14. The California Supreme Court entered a final order requiring plaintiff to pay the costs on February 21, 2003. See Gadda v. Ashcroft, 377 F.3d at 942 n.3 (finding that the California Supreme Court's order was final). The order made the costs payable "in accordance with Business and Professions Code section 6140.7." Although State Bar Court Rule of Procedure 282 permitted plaintiff to challenge the amount assessed within 30 days, he did not do so, in part because section 6140.7 states that "costs assessed against a member who resigns with disciplinary charges pending or by a member who is actually

suspended or disbarred shall be paid as a condition of reinstatement of or return to active membership." Plaintiff has no present intention of seeking readmission to the California bar.

On September 8, 2003, California Business and Professions Code sections 6086.10 and 6140.5 were amended to allow costs and assessments associated with disbarment to be enforced through money judgments. Cal. Bus. & Prof. Code §§ 6086.10(a), 6140.5(d). Section 6086.10, as amended, provides that "[i]n any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs." Id. § 6086.10(a). An order imposing costs "is enforceable both as provided in Section 6140.7 and as a money judgment." Id. Section 6140.5 similarly provides that "[a]ny assessment against an attorney [for reimbursement of the Client Security Fund] . . . that is part of an order imposing a public reproval on a member or is part of an order imposing discipline or accepting a resignation with a disciplinary matter pending, may also be enforced as a money judgment." Id. § 6140.5(d). The California State Bar has since begun "pilot" programs aimed at obtaining judgments under the new statutes. The pilot programs focus, at least in part, on offenders with the highest unpaid disciplinary costs. Complaint, Attachment 7.

In a June 1, 2005 letter to plaintiff, the State Bar of California informed plaintiff that if he did not voluntarily pay the sums he owed, the State Bar would seek a money judgment. Complaint, Attachment 4. The letter states that "[r]ecent legislative changes to the Business and Professions Code now allow the State Bar to collect certain obligations owed as a result of State Bar Court disciplinary cost assessments or Client Security Fund reimbursements as money judgments." Id. According to the letter, the total amount owed by plaintiff was $21,845.14, the amount of the original certificate of costs.[2] Id.

Plaintiff filed the instant lawsuit in response to the State Bar's collection attempts. Plaintiff's complaint states six claims, five of which recite violations of federal law and the sixth of which requests injunctive relief against the defendants. The first claim, for violation of the Due Process Clause of the Fourteenth Amendment, is that the state defendants' attempts to collect the money owed by plaintiff are unlawful, as plaintiff has no opportunity to challenge the amount owed before a judgment is entered against him in state court. Also embedded in plaintiff's first claim is the

(apparently unrelated) allegation that the federal defendants continue to send him correspondence relating to immigration cases that plaintiff formerly litigated, subjecting plaintiff to a risk of prosecution for the unlicensed practice of law.

The second claim, for violation of the Equal Protection Clause of the Fourteenth Amendment, is (to the extent that it is comprehensible) that the state defendants' decision to seek money judgments against only a subset of offenders is discriminatory and without rational basis.

The third and fourth claims contain allegations that the State Bar of California lacked jurisdiction to disbar plaintiff, and violated the Commerce Clause, Supremacy Clause, and First Amendment in doing so.

The fifth claim contains allegations that the federal defendants violated unspecified "civil rights" of plaintiff.

The sixth claim (erroneously labeled "COUNT 5") requests injunctive relief against all defendants.[3]

On August 30, the court requested briefing on the narrow question of whether application of sections 6140.5 and 6086.10 to plaintiff, as alleged in plaintiff's complaint, violates either the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment. In response, the court has received nearly a dozen briefs on a wide range of topics, including each of plaintiff's claims, the court's authority to manage its docket, and the court's ability to rule impartially on this case. A short summary of the papers currently under consideration follows:

1. State Defendants' Motion for Judgment on the Pleadings (Filed September 14, 2005)
   Plaintiff's Reply to Motion for Judgment on the Pleadings (Filed September 19, 2005)
   State Defendants' Reply in Support of Motion for Judgment on the Pleadings (Filed October 7, 2005)

   These briefs address the merits of each of plaintiff's claims against the state defendants.

2. Federal Defendants' Response to Court's Order (Filed September 19, 2005)
   Plaintiff's Reply to Response to Court's Order (Filed September 28, 2005)
   Plaintiff's Brief re Judge Patel's Order (Filed September 30, 2005)

   These briefs address the merits of plaintiff's first and second claims, as they apply to the federal defendants.

3. Plaintiff's Motion for Summary Judgment (Filed September 28, 2005)
   State Defendants' Objection and Opposition to Untimely Motion for Summary Judgment (Filed October 3, 2005)

These briefs contain plaintiff's arguments in support of each of his claims.

4. Federal Defendants' Motion to Dismiss (Filed September 30, 2005)
Plaintiff's Reply to Motion to Dismiss (Filed October 11, 2005)
Federal Defendants' Reply to Opposition re Motion to Dismiss (Filed October 17, 2005)

These briefs address the merits of plaintiff's claims against the federal defendants, focusing on the fifth claim for "civil rights" violations.

As there is substantial overlap among the issues discussed in the numerous briefs, the court will consider each of the parties' arguments as if they were consolidated in a single motion.

LEGAL STANDARD

I. Motion to Dismiss

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal sufficiency of a claim." Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Unless it appears beyond doubt that a plaintiff can prove no set of facts in support of her claim which would entitle her to relief, a motion to dismiss must be denied. Lewis v. Tel. Employees Credit Union, 87 F.3d 1537, 1545 (9th Cir. 1996) (citation omitted); see also Conley v. Gibson, 355 U.S. 41, 45–46 (1957). When assessing the legal sufficiency of a plaintiff's claims, the court must accept as true all material allegations of the complaint, and all reasonable inferences must be drawn in favor of the non-moving party. See, e.g., Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337–38 (9th Cir. 1996) (citations omitted). Dismissal is proper under Rule 12(b)(6) "only where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." Navarro, 250 F.3d at 732 (quoting Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988)).

II. Motion for Judgment on the Pleadings

Federal Rule of Civil Procedure 12(c) provides that after the pleadings are closed but without causing delay to trial, parties may move for judgment on the pleadings. "A judgment on the pleadings is properly granted when, taking all allegations in the pleading as true, the moving party is entitled to judgment as a matter of law." McGann v. Ernst & Young, 102 F.3d 390, 392 (9th Cir. 1996). The essence of analysis under Rule 12(c) is "to determine whether, if the facts were as

pleaded, they would entitle the plaintiff to a remedy." International Techs. Consultants, Inc., v. Pilkington PLC, 137 F.3d 1382, 1384 (9th Cir. 1998).

III. Motion for Summary Judgment

Summary judgment is proper when the pleadings, discovery and affidavits show that there is "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. Id. The party moving for summary judgment bears the burden of identifying those portions of the pleadings, discovery, and affidavits that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Cattrett, 477 U.S. 317, 323 (1986). On an issue for which the opposing party will have the burden of proof at trial, the moving party need only point out "that there is an absence of evidence to support the nonmoving party's case." Id.

Once the moving party meets its initial burden, the nonmoving party must go beyond the pleadings and, by its own affidavits or discovery, "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). Mere allegations or denials do not defeat a moving party's allegations. Id.; Gasaway v. Northwestern Mut. Life Ins. Co., 26 F.3d 957, 960 (9th Cir. 1994). The court may not make credibility determinations, and inferences to be drawn from the facts must be viewed in the light most favorable to the party opposing the motion. Masson v. New Yorker Magazine, 501 U.S. 496, 520 (1991); Anderson, 477 U.S. at 249.

DISCUSSION

I. Plaintiff's Status as a Pro Se Litigant

As a threshold matter, defendants argue that plaintiff, although he is litigating *pro se*, should not be entitled to a liberal construction of his pleadings because, unlike most *pro se* litigants, he is trained as a lawyer. In support, defendants cite cases such as Smith v. Plati, 258 F.3d 1167, 1174

(10th Cir. 2001), cert. denied, 537 U.S. 823 (2002), which hold that licensed attorneys should not receive the benefit of liberally construed pleadings solely because they are representing themselves.

None of the cases cited by defendants considers the precise facts of the instant case, where plaintiff was formerly licensed to practice law, but was subsequently disbarred for incompetence and misconduct. It would be unfair for this court to adopt (as it must) the conclusions of previous courts that plaintiff is not competent to practice law while simultaneously holding him to the standard of a licensed lawyer in reviewing his pleadings. Thus, the court will consider plaintiff's complaint under the "less stringent" standard applicable to *pro se* complaints. See Haines v. Kerner, 404 U.S. 519, 520 (1972).

II. Federal Defendants

A. Due Process and Equal Protection Claims

The federal defendants argue, and plaintiff does not dispute, that to the extent plaintiff's first two claims relate to the California State Bar's attempts to collect the outstanding membership fees, the conduct of the federal defendants is not implicated. As the federal defendants have no involvement in the collection of state bar dues or fees, the portions of the first two claims relating to the collection are dismissed, as to the federal defendants, with prejudice.

Plaintiff also complains generally that the federal defendants continue to contact him, subjecting him to "prejudice." Complaint ¶ 40. The court considers this argument at Part II.C, infra.

B. State Regulation of Federal Immigration Lawyers

Plaintiff's third and fourth claims allege that the state defendants violated a host of federal constitutional provisions in their decision to disbar plaintiff. All defendants argue that this court lacks jurisdiction to consider these questions in light of plaintiff's still-pending appeals pertaining to his disbarment. In addition, once the appeals in those cases are resolved, plaintiff's third and fourth claims will be *res judicata*. In his brief in opposition to the state defendants' motion for judgment on the pleadings, plaintiff appears not to dispute that the third and fourth claims, which relate to his disbarment, are precluded. The court therefore dismisses them, as to all defendants, with prejudice.

C. Violations of Plaintiff's "Civil Rights"

Plaintiff's fifth claim, titled "CIVIL RIGHTS," consists of a lengthy narrative of alleged mistreatment by certain federal immigration judges and officials. The claim also alleges that the federal defendants have sent him "over two hundred official letters from the above agencies including a legal permanent residence card (green cards) which is unheard of. This has caused great grief and loss of benefits, work authorization, legal permanent benefits to Gadda's former clients." Complaint ¶ 62. The claim does not identify a specific violation of a federal statute or constitutional provision, but alleges generally that plaintiff's due process and equal protection rights have been violated. Id. ¶ 65.

The court is unable to identify the legal basis for plaintiff's claim and is required to dismiss it for that reason alone. In addition, as the federal defendants point out, even assuming that plaintiff could state a cause of action under 42 U.S.C. section 1983 for some violation of federal law, each of the federal defendants enjoys absolute immunity with respect to the alleged harmful acts. The federal agencies are entitled to absolute immunity in the absence of a waiver. See FDIC v. Meyer, 510 U.S. 471, 475, 484 (1994). The individual federal defendants are all either immigration judges or federal officers involved in the disbarment proceedings against plaintiff, who are entitled to judicial or quasi-judicial immunity. See In re Castillo, 297 F.3d 940, 948 (9th Cir. 2002) (judicial immunity extends to administrative law judges and "agency officials, when performing functions analogous to those of a prosecutor").

Contrary to plaintiff's suggestion, there is no exception to either judicial or Eleventh Amendment immunity for judicial officials who are "conspirators." See Complaint ¶ 61. The two cases cited by plaintiff in support of such an exception are inapposite. Dennis v. Sparks, 499 U.S. 24 (1980), holds only that private parties conspiring with judges are not entitled to judicial immunity. Id. at 30–32. Stump v. Sparkman, 435 U.S. 349 (1978), holds that judges engaged in non-judicial conduct are not entitled to judicial immunity. Id. at 361 n.10. Here, all of the alleged misconduct took place in judicial or quasi-judicial proceedings.

As plaintiff has not stated a cognizable claim, and cannot do so due to the absolute immunity afforded to the federal defendants, claim five is dismissed with prejudice.

III. State Defendants

A. Immunity

The state defendants correctly note that plaintiff may not obtain any relief against the California Supreme Court and the California State Bar, both of which are state institutions protected from lawsuit under the Eleventh Amendment, and may not obtain monetary relief against the individual state defendants. As noted supra, there is no "conspiracy" exception to the Eleventh Amendment or to judicial immunity. Plaintiff's claims against the state institutions and monetary claims against the individual state defendants are therefore dismissed with prejudice. The state defendants concede, however, that plaintiff may attempt to secure injunctive relief against the individual state defendants. The court considers this possibility below.

B. Due Process and Equal Protection Claims

Plaintiff alleges that the individual state defendants are seeking to apply California Business and Professions Code sections 6140.5 and 6086.10 to plaintiff retroactively, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

1. Retroactivity

Before the court reaches plaintiff's constitutional arguments, it must determine whether application of sections 6140.5 and 6086.10 to plaintiff's debt is indeed "retroactive," and, if so whether the statutes were intended to have retroactive application. As the Supreme Court has explained,

> [t]he principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student. . . . This court has often pointed out: "[The] first rule of construction is that legislation must be considered as addressed to the future, not to the past[;]. . .retrospective operation will not be given to a statute which interferes with antecedent rights. . .unless such be 'the unequivocal and inflexible import of the terms, and the manifest intention of the legislature.'"

United States v. Security Industrial Bank, 459 U.S. 70, 79–80 (1982) (internal citations omitted). This same legal standard is also embraced by California courts construing California statutes. In the seminal California retroactivity decision, Aetna Casualty & Surety Co. v. Industrial Accident

Commission, the court noted that "[it] is an established canon of interpretation that statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent." 30 Cal. 2d 388, 393 (1947).

The first question, therefore, is whether sections 6140.5 and 6086.10 of the California Business and Professions Code are retroactive in effect. "A retroactive or retrospective law 'is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.'" Myers v. Philip Morris Cos., 28 Cal. 4th 828, 839 (2002). In attempting to obtain a money judgment against plaintiff, the State Bar of California is asserting that the recent amendments to the California Business and Professions Code apply to all outstanding balances, irrespective of when the initial costs and assessments were incurred. Under this construction, sections 6140.5 and 6086.10 affect liabilities and obligations that existed prior to the amendments. Originally, the unpaid balances were only due as a condition of reinstatement to the State Bar; now the balances may be enforced as a money judgment. Such an application of the statute is clearly retroactive.

The second question is whether sections 6140.5 and 6086.10 were intended to apply retroactively. In deciding whether a statute was intended to apply retroactively, "California courts comply with the legal principle that unless there is an 'express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature . . . must have intended a retroactive application.'" Id. at 841. In conducting this analysis, the "California courts apply the same 'general prospectivity principle' as the United States Supreme Court." Evangelatos v. Superior Court, 44 Cal. 3d 1188, 1208 (1988). Under this formulation, the retroactivity of a statute is, initially, a policy determination for the Legislature and one to which the courts defer absent "some constitutional objection" to retroactivity. Western Sec. Bank v. Superior Court, 521 U.S. 320, 328 (1997). Thus, a statute that is ambiguous with respect to retroactivity is construed to be prospective due to the lack of a "clear congressional intent." Landgraf v. USI Film Prods., 511 U.S. 244, 264 (1994).

Applying this principle to the statutes at issue here, there is nothing in the language of either section 6140.5 or 6086.10 of the California Business and Professions Code which expressly

indicates that the sections are to apply retroactively. The 2003 amendment to section 6140.5 provided, in pertinent part, that "[a]ny assessment. . .may be enforced as a money judgment." Cal. Bus. & Prof. Code § 6140.5(d). Section 6086.10 was correspondingly amended to allow any order imposing public reproval or discipline to be "enforceable. . .as a money judgment." Id. § 6086.10(a). Neither section contains an explicit provision for retroactive application; nor is there any mention of currently outstanding dues. Therefore, in order for the sections to be applied retroactively, it must be very clear from extrinsic sources that the California Legislature intended retroactive application.

The legislative history of both sections 6140.5 and 6086.10 of the California Business and Professions Code indicate that the California Legislature intended dues such as those owed by plaintiff to be enforceable as a money judgment. The session laws for the 2003 amendments provide that "[i]t is the intent of the Legislature that the changes made to Sections 6086.10 and 6140.5 of the Business and Professions Code by this act shall apply to costs and assessments ordered but unpaid on the date this act becomes operative." 2003 Cal. Stat. 334. Plaintiff has yet to satisfy his outstanding debt to the State Bar of California. The debt was ordered paid by the California Supreme Court on February 21, 2003. Thus, on January 1, 2004, the date the amendments became operative, plaintiff's outstanding dues were ordered but unpaid. The session laws make clear that the outstanding amounts in existence at the time the amendments became operative are subject to enforcement as a money judgment. Given that "the only indicators of legislative intent ascertainable in this case call for the retroactive application of the amendment[s]," this court concludes that the California Legislature intended the amended sections to apply retroactively. See In re Marriage Bouquet, 16 Cal. 3d 583, 591 (1976). Consequently, the current versions of sections 6140.5 and 6086.10 of the California Business and Professions Code are applicable to plaintiff's outstanding balance.

Plaintiff offers, as an alternative to his constitutional claims, the argument that even under the amended statutes he is not required to satisfy the unpaid costs and assessments unless he applies for reinstatement of membership to the State Bar of California. This argument is without merit based on the unambiguous text of the statute. It is true that according to section 6140.5 of the

California Business and Professions Code that "the reimbursed amount, plus applicable interests and costs, shall be paid as a condition of reinstatement of membership." Cal. Bus. & Prof. Code § 6140.5(c). However, this language does not preclude the enforceability of unpaid amounts against individuals who do not apply for reinstatement. Section 6140.5 also clearly states that "[a]ny assessment. . .may also be enforced as a money judgment." Cal. Bus. & Prof. Code § 6140.5(d). The costs and assessments therefore may be enforced despite the fact that plaintiff has not sought reinstatement to the State Bar of California.

Plaintiff also argues that even if sections 6140.5 and 6080.10 of the California Business and Professions Code are retroactive, they do not apply to his outstanding dues because the assessments were set forth in a final decision by the Supreme Court of California. Plaintiff cites Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995), for the proposition that final judicial decisions may not be overturned by retroactive legislation. Complaint ¶ 40. The Supreme Court in Plaut held that "Congress may not declare by retroactive legislation that the law applicable to [a particular case] was something other than what the courts said it was." Plaut, 514 U.S. at 227. The Court's decision in Plaut was animated by a concern for preserving the proper separation of powers among the branches of the federal government. See id. at 222–25. The amendments to sections 6140.5 and 6080.10, however, did not alter a past decision by any court or contradict a court's interpretation of the law. They merely provided a new enforcement mechanism by which the State Bar of California can collect unpaid costs and assessments. It is the California State Bar, over which the California Supreme Court exercises authority—and not California's legislature—that chose to apply the new statutes to plaintiff's uncollected fees. Thus, there is no separation of powers issue in the present action.

Having concluded that the challenged statutes are retroactive as applied to plaintiff's balance, and that they are intended to apply retroactively, the court now turns to the merits of plaintiff's constitutional claims.

2. Due Process Violation

Plaintiff argues that retroactive application of sections 6140.5 and 6080.10 violates the Due

Process Clause of the Fourteenth Amendment because "there are no procedural due process rights to contest the penalties under the new statutes [or] to verify the correct amount, disbursements and other monetary billings by the State Bar." Complaint ¶ 37. The retroactive application of economic legislation must satisfy rational basis review. Cordes v. Gonzales, 421 F.3d 889, 895–96 (9th Cir. 2005); Campanelli v. Allstate Life Ins. Co., 322 F.3d 1086, 1100 (9th Cir. 2003), cert. denied, 540 U.S. 1103 (2004). Here, retroactive application serves the government interest in collecting money owed by former attorneys with no intent or ability to return to the practice of law. Before the change to the law the California State Bar would have been unable to collect any of the money that plaintiff owes, as plaintiff does not intend to seek readmission to the California State Bar. Retroactive application of the statutes therefore furthers a legitimate state interest.

Nonetheless, the court has some misgivings about the fairness of the result in the instant case. Plaintiff's past egregious conduct notwithstanding, his current position is somewhat sympathetic; prior to the change in legislation, he had no incentive to challenge the cost assessment because he had no intention of seeking readmission to the California State Bar. As a result, he allowed the thirty-day window to lapse. The retroactive changes to the law were made thereafter.

Fortunately, a separate State Bar Court Rule offers plaintiff some prospect of relief. Rule 282(a) provides that "[u]pon grounds of hardship, special circumstances or other good cause, a respondent against whom costs have been assessed under rule 280 may move for relief, in whole or in part, from the order assessing costs for an extension of time to pay costs or for the compromise of a judgment obtained under Business and Professions Code section 6086.10(a)." Plaintiff has represented that his current financial condition is dire. The court therefore encourages plaintiff to seek an equitable reduction or elimination of the amount owed and requests that the state defendants give such a request serious consideration, should plaintiff's allegations regarding his financial condition prove to be true.

Claim one is therefore dismissed with prejudice.

3. Equal Protection Violation

Plaintiff does not allege that he is a member of a protected class. The court therefore reviews

his equal protection challenge under the rational basis standard of review. See Giannini v. Real, 911 F.2d 354, 358 (9th Cir.), cert. denied, 498 U.S. 1012 (1990).

The state defendants argue, and plaintiff does not dispute, that the pilot program's selection of attorneys from which to collect past dues is guided, at least in part, by the desire to seek judgments first from those attorneys with the highest outstanding balances. Selective application of a law is not a *per se* violation of the Equal Protection Clause, provided that the selection is driven by permissible criteria. See United States v. Sacco, 428 F.2d 264, 271 (9th Cir.), cert. denied, 400 U.S. 903 (1970). Here, attempting to collect the largest balances first is clearly rational and does not affect the rights of a protected class. Plaintiff's equal protection challenge therefore fails as a matter of law, and claim two is dismissed with prejudice.

C. Violations of Plaintiff's "Civil Rights"

Plaintiff's fifth claim does not allege any harmful conduct by any of the state defendants. The claim is therefore dismissed with prejudice as to each of the state defendants.

CONCLUSION

For the above reasons the court hereby GRANTS defendants' motions to dismiss and for judgment on the pleadings. Plaintiff's complaint is dismissed with prejudice in its entirety. The clerk shall close the file.

IT IS SO ORDERED.

Date: January 3, 2006

MARILYN HALL PATEL
United States District Judge
Northern District of California

ENDNOTES

1. Unless otherwise noted, background facts are taken from plaintiff's complaint.

2. Plaintiff identifies a number of communications from the California State Bar in his complaint, some of which appear to reflect outstanding balances of more than $21,845.14. At oral argument, defendants represented that $21,845.14 is the correct balance. For purposes of deciding the instant motion, the court accepts and relies upon defendants' representation.

3. The sixth claim does not state an independent basis for relief, but rather is predicated upon a finding of some violation as alleged in claims one through five. As each of the first five claims will be dismissed with prejudice, as discussed in more detail below, the court also dismisses claim six with prejudice.